STATE OF MICHIGAN

COURT OF APPEALS

SCOTT A. STARBUCK,

Plaintiff-Appellant,

v

LISA E. STARBUCK,

Defendant-Appellee.

UNPUBLISHED
February 18, 2003

No. 235528
St. Clair Circuit Court
LC No. 00-002394-DO

Before: Whitbeck, C.J., and Griffin and Owens, JJ.

PER CURIAM.

Plaintiff Scott A. Starbuck appeals as of right the trial court's disposition of property pursuant to a judgment of divorce. We affirm.

I. Basic Facts And Procedural History

By quit claim deed dated December 3, 1997, plaintiff and his parents acquired title to the property at 769 Richman Road. Plaintiff had purchased the land as vacant property in July 1996, and borrowed $90,000 listed in the mortgage dated December 3, 1997. Defendant Lisa E. Starbuck and plaintiff met in May 1998, and began dating in late 1998. Defendant moved into the house on Richmond Road in January 1999 when construction was nearly complete on the house's main level, but the basement was unfinished. After eleven months of unmarried cohabitation, plaintiff and defendant married on December 4, 1999. Though both parties had children from other relationships, they did not have children during their time with each other. On August 8, 2000, defendant left the marital home with the intention of returning, but plaintiff filed his complaint for divorce one week later.

The testimony at trial focused on the parties' respective contributions to the marital estate, their financial claims, and why the marriage had crumbled. According to defendant, she and plaintiff built two bedrooms and a bathroom in the basement. She said that she "put a lot of work in the basement," including helping plaintiff with the drywall, wiring, paneling, and ceiling, and independently taping, mudding, and sanding the drywall, and then priming, painting, and finishing the surfaces and trim. Plaintiff did not dispute defendant's work on the house.

Defendant admitted she did not contribute regularly to the parties' joint checking account; she said she deposited infrequent child support checks when she received them and on occasion

made extra money babysitting. Defendant acknowledged that plaintiff paid for nearly all household and family expenses, saying, "I was a housewife, I took care of my kids. I home schooled my daughter. I worked on the house. I worked on the yard. It isn't that I just sat at home and didn't contribute."

Plaintiff asserted that defendant operated a daycare business from the marital home, that the children for whom defendant cared caused substantial wear and tear to the home's interior, and that defendant kept all earnings from the business for herself. Defendant admitted trying to open a daycare business in the home she occupied before moving in with plaintiff, but said she was unable to obtain the required licensing. She denied operating a daycare or babysitting business of any kind from the marital home. In an attempt to support his contention, plaintiff offered the names of two children for whom defendant allegedly cared in her daycare business, and on cross-examination, plaintiff admitted that the two children belonged to "Wendy," defendant's best friend and one of plaintiff's very good friends as well. Plaintiff admitted that his seventeen-year-old daughter often stayed at the marital home, but denied allegations that she or her friends were responsible for the damages he attributed to defendant's daycare business. Wendy DePelsMaeker confirmed that she and defendant were best friends and that plaintiff was her friend also. DePelsMaeker said she and defendant "traded off" babysitting duties for their children, but DePelsMaeker did not see defendant running a daycare business from the marital home, which she claimed to visit three or four times each week.

Defendant's sister, Merina Moran, who stayed at the marital home for two weeks immediately before defendant left on August 8, also denied plaintiff's assertion that defendant operated a daycare business from the home. Moran admitted that several children were often present in the home: defendant's two children, DePelsMaeker's two children on occasion, plaintiff's son "on and off," and Moran's own six-month-old baby. Moran denied seeing any interior damage when she and defendant left the house on August 8.

Defendant brought furniture, household items, clothing, personal items, and a 1989 Dodge Grand Caravan to the marriage. Defendant, with plaintiff's knowledge and apparent approval, gave the van to her sister when she and plaintiff purchased a 1994 Plymouth Voyager for $6,200 in May 2000 with an income tax refund. Defendant received nothing of value from her sister in exchange for the van, valued at $500 for purposes of defendant's May 1999 bankruptcy petition. Plaintiff admitted that the money for the 1994 van's purchase came from "his" 1999 income tax return, which he had filed jointly with defendant and on which he claimed defendant's child as a dependent.

Defendant claimed she owned household and personal goods that had a fair market value of $3,000 in her petition for bankruptcy. She testified that the value of the items lost, damaged, or withheld from her by plaintiff was nearly $6,000; she explained that the disparity between the bankruptcy figures and the $6,000 total she claimed at trial was the difference between fair market value and replacement value.

Plaintiff reported that the parties' marriage broke down because of defendant's alcohol problem. According to plaintiff, defendant said she would quit drinking and seemed to be "[r]efraining from drinking a great deal" before they were married; after the marriage, however, plaintiff said, "[I]t began to alarm me, the amount of drinking she was doing, the regularity to her

drinking, the regularity of the upsets around the house." Defendant denied a problem with alcohol and denied having received treatment for alcohol abuse. She admitted attending a hypnosis session for alcohol abuse, but insisted she attended it "for fun" with her friends just to see what might happen.

Plaintiff's younger brother, Matthew Starbuck, testified that he saw his brother and defendant regularly and claimed that defendant drank every time he was around them after the marriage. On cross-examination, plaintiff's brother admitted that he frequently saw defendant on weekends and occasions on which everyone was also drinking. Defendant's sister claimed she never saw defendant "drink anything but socially." DePelsMaeker said she had known defendant for four years and had seen her drink socially, but said that defendant "never got out of control . . . she kept her wits about her." Defendant's mother, Cheryl Bedard, denied seeing either defendant or plaintiff drink to excess.

Defendant testified that she left the marital home on August 8, 2000, because plaintiff "had been acting irrational," but that she intended to return to the home after allowing a few days for things to calm down. According to defendant, plaintiff had a gun, accused her of things that were not true, refused to discuss matters with her, and threatened to commit suicide. Plaintiff denied wielding a gun or using a gun to cause damage to the marital home's interior.

Defendant said she returned to the home on August 9, 2000, with Moran to retrieve clothing and other items she and her children would need for the next few days, but plaintiff had locked the doors to the house and defendant could not get in. According to defendant and confirmed by Moran, she and plaintiff never locked the doors to the house, and plaintiff knew defendant did not have keys to the house. Unable to retrieve any of her or her children's belongings, defendant wrote the first of several checks on which plaintiff stopped payment. Defendant testified that she had receipts for each purchase, and she denied plaintiff's assertion that she had knowingly overdrawn their account. Defendant noted that she had recently paid all the bills and knew that there was sufficient money in the account. Plaintiff acknowledged that defendant was the one responsible for paying the parties' bills.

Defendant testified that she withdrew $792 from the parties' savings account on August 11 – the total of the checks she had written plus banking fees – but it was unclear whether this amount was used to reconcile those checks or whether it was taken in addition to the goods she purchased with the checks. Defendant did not disturb the parties' Christmas Club account, even though she knew it contained more money than the savings account.

According to defendant, the parties' 1994 Plymouth Voyager was in good condition when she left the marital home on August 8, 2000. Although plaintiff had two other vehicles at his disposal, he admitted that he "stole" the Plymouth Voyager from defendant on at least two occasions after August 8. Defendant returned to the marital home to get the van and found it "barricaded" in the pole barn. She acknowledged that she damaged the side of the van when she attempted to remove it from the barn. Defendant said she drove the van to her mother's home, and shortly after that received a court order in the mail prohibiting her and plaintiff from changing the location of any marital possessions. Nevertheless, plaintiff went to defendant's mother's home during the early morning hours one day and removed an anti-theft device from the van by using a hacksaw to cut through the van's steering wheel. Defendant said when she

went to get the van back again, plaintiff had rendered it inoperable by removing the van's steering wheel. Plaintiff later replaced the steering wheel.

Defendant obtained an order for her exclusive use of the van, and when she once again retrieved the van, plaintiff had removed the van's four new tires and replaced them with three old tires and one "doughnut," the small spare tire intended for temporary use. In addition, defendant claimed that plaintiff had taken the ashtrays, lighter, and service manuals from the van, drained the tank of gas, broken off the van's side mirror, and scraped the current registration tabs off the license plate. Plaintiff admitted exchanging the van's tires, but denied responsibility for the items missing from the van and the license plate tabs.

Because plaintiff failed to cooperate with defendant's efforts to retrieve her belongings, the parties were forced by court order to hire court officer Charles Silver to accompany them as defendant made a list of the items in the house that belonged to her. Many of defendant's possessions were ultimately found, ruined, in a pole barn located on the property and there was some dispute about who had placed the items there and when the items were placed there. Silver accompanied defendant to the marital home on a second occasion when many of defendant's larger items were removed and several truckloads from the pole barn were taken directly to the dump. Plaintiff had moved defendant's belongings from the marital home and placed piles of her possessions in a small shed, in the pole barn, or outside where many of them were exposed to the weather, sun bleached, mildewed, and destroyed. Defendant was not able to retrieve the bulk of her personalty from the marital home until December 3, 2000.

Defendant's mother, Cheryl Bedard, testified that plaintiff telephoned her house in early September and told Bedard that defendant's "stuff was in the yard" and could be collected. Bedard said she and her husband went to the Richman Road address the next day, and she described the mess in the yard as "ridiculous." Plaintiff denied that he placed many of the damaged items in the pole barn; he claimed defendant placed many of them there in 1999 when she moved into the house. According to plaintiff, defendant procrastinated in retrieving her belongings and his "house was held hostage" by all her possessions.

Defendant and plaintiff both presented "limited appraisals for restricted use" of the Richman Road property indicating that its fair cash market value was $142,000 or $144,000, respectively. Defendant said she knew only that plaintiff's mortgage was $90,000 in 1997 and thought that plaintiff had very little, if any, equity in the home when she moved there in 1999. Defendant was never added to the property's title, and plaintiff confirmed that he had never looked into adding her to it. Plaintiff denied any agreement with defendant concerning marital property or compensation for defendant's premarital investment of sweat equity. Defendant acknowledged that she and plaintiff never discussed compensation for her work on the Richman property and had made no formal agreement concerning property division in the event of divorce.

Defendant confirmed her request for spousal support as had been ordered by the trial judge, and she stated she believed she was entitled to a portion of the equity in the marital home as well as reimbursement for her personalty. Defendant requested one-half of the $1,800 withheld from the parties' 1999 tax return for plaintiff's child support arrearages, which plaintiff received after she left the marital home. Defendant further requested that plaintiff take care of the checks on which he stopped payment. Defendant asked that she be awarded the van but

requested nothing from plaintiff's pension or retirement monies. Plaintiff agreed defendant was entitled to "some amount" to replace her lost personalty and "something" for her assistance in helping the marital home appreciate in value. He argued that defendant should not be awarded any spousal support. He denied knowing of or receiving $1,800 from the 1999 tax refund about which defendant testified.

The trial court, in its written opinion and order, made lengthy factual findings. Key among those findings was that plaintiff had taken a number of actions toward defendant, such as locking her out of the marital home, barring her from retrieving her belongings, damaging her vehicle, and ruining her other personal property, to cause her "hardship." The trial court, noting defendant's efforts to improve the marital home, determined that one-third of the equity of the home was a marital asset, and awarded defendant one-half of that equity in the house, amounting to $9,028.62. The trial court awarded the house to plaintiff, and ordered him to assume full responsibility for the mortgage. The trial court awarded defendant the 1994 Plymouth Voyager, and ordered plaintiff to reimburse defendant for new tires and license plate tabs. The trial court also awarded defendant part of the tax refund plaintiff had retained, $500 for the damage to her personal property, and resolved the spousal support issue.

II. Marital Home

A. Standard Of Review

Plaintiff argues that the trial court's award of $9,028.62 represents an inequitable disposition of the parties' marital home. He contends that the trial court erroneously found that he and defendant had an implicit agreement regarding the home. This Court reviews a trial court's findings of fact for clear error.[1] A trial court's findings are clearly erroneous when, after conducting a thorough review of the record, this Court is convinced that the trial court made a mistake.[2] This Court reviews dispositional rulings to determine whether the trial court reached a fair and equitable result in light of the circumstances.[3]

B. Equitable Division

A trial court must include a determination of the parties' property rights in a judgment of divorce.[4] The goal of dividing marital assets is "to reach an equitable division in light of all the circumstances. Each spouse need not receive a mathematically equal share, but significant

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[1] See *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

[2] See *id*.

[3] See *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992).

[4] MCR 3.211(B)(3).

departures from congruence must be explained clearly by the court."[5] Marital assets are those real and personal properties "that shall have come to either party by reason of the marriage."[6]

The trial court in this case issued detailed findings of fact regarding its valuation and division of the marital home. Contrary to plaintiff's assertion, the trial court did not indicate that it found an implicit contract between the parties for services defendant performed to improve the marital home and used that finding as a basis for the property division. Rather, the trial court specifically noted that plaintiff owned the home before the parties married; defendant's interest in the home, according to the trial court, resulted from the parties' agreement that defendant would not work outside the home, but would "instead stay at home and care for the home and property." The trial court further noted that both parties were involved in improving the marital home, and specifically, that "[t]he defendant participated in this construction and did a good deal of the actual work necessary for this improvement [to the basement]."

Additionally, the trial court found that plaintiff failed to provide evidence to refute its valuation and division of the marital home. Plaintiff offered only a single appraisal of the home conducted on December 21, 2000, but intended to be retroactive to December, 1999, the date the parties married. The trial court observed that plaintiff's appraisal indicated that the basement was finished on the date of inspection – December 21, 2000 – but plaintiff offered no evidence of the basement's condition at the time the parties married. On these findings of fact, the trial court undertook a simple mathematical valuation and division of the equity existing in the home at the time of divorce, in which we see no error.

The trial court first determined that one-third of the equity in the marital home was a marital asset to be disposed of in the divorce. The trial court grounded its apportionment of the parties' marital home on its specific finding that the evidence showed defendant's participation in the improvement and upkeep of the marital home, and on its conclusion that the parties were married for approximately 1½ years of the 3½ years during which plaintiff owned the property. On these bases, the trial court concluded that one-third of the equity in the marital home was a marital asset to which defendant was entitled to one-half. The trial court's opinion clearly acknowledged defendant's contribution to the improvement of the parties' marital home. That defendant may have made part of this contribution during the eleven months she lived with plaintiff in the marital home *before* the parties were married does not prohibit defendant from acquiring an interest in the marital home.

Plaintiff is correct that parties engaged in unmarried cohabitation do not enjoy the property rights bestowed on legally married couples. However, contrary to plaintiff's argument, *Featherston v Steinhoff*[7] is not persuasive in this case because – unlike the instant parties – the plaintiff and the defendant in *Featherston* were *never* legally married. Moreover, Michigan law does not absolutely prohibit a party from acquiring an interest in the parties' marital property

[5] See *Byington v Byington*, 224 Mich App 103, 114-115; 568 NW2d 141 (1997) (citations omitted).

[6] MCL 552.19.

[7] *Featherston v Steinhoff*, 226 Mich App 584; 575 NW2d 6 (1997).

when a period of unmarried cohabitation preceded the parties' marriage and when the property at issue was not entirely or clearly limited to legal marital habitation.[8] A trial court may invade one of the party's separate estates when the other spouse "contributed to the acquisition, improvement, or accumulation of the property."[9] Here, the trial court clearly indicated that defendant's interest in the marital home arose from the parties' mutual agreement that defendant stay home and maintain the household *and* defendant's contribution to the home's improvement. "When one significantly assists in the acquisition or growth of a spouse's separate asset, the court may consider the contribution as having a distinct value deserving of compensation."[10] The trial court's disposition of the marital estate was equitable.

Affirmed.

/s/ William C. Whitbeck
/s/ Richard Allen Griffin
/s/ Donald S. Owens

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[8] See *Reeves v Reeves*, 226 Mich App 490, 493, n 1; 575 NW2d 1 (1997); *Bone v Bone*, 148 Mich App 834, 837-838; 385 NW2d 706 (1986).

[9] MCL 552.401; *Reeves*, *supra* at 494-495.

[10] *Reeves*, *supra* at 495.